

STATE BOARD TO REVIEW CLAIMS

MEETING OF FEBRUARY 29, 1996  
Reno, Nevada

ITEM: IV.C.

SUBJECT: Resolution to Adopt a Policy Delegating Authority to the Board's Petroleum Fund Administrator to Determine Petroleum Fund Coverage for Certain Cases Pursuant to NAC 590.780(1)

DISCUSSION: NAC 590.780(1) requires the submittal of an initial claim within 12 months from the date when a discharge was known should have been known in order to maintain fund eligibility. This regulation also allows the Board to continue fund eligibility if good cause is shown for the failure to comply with the deadline.

At its December, 1995, meeting, the Board discussed the effort and the delays to the affected parties in determining fund coverage for sites where the initial claim was not submitted within the required 12 months. It was generally agreed at that time that many of the exceptions granted followed basic tenets that could be streamlined for efficiency.

NDEP was requested to coordinate with the Board in developing a policy that would streamline the process for granting such exceptions. The proposed resolution offers a policy whereby the Board would grant authority to the Petroleum Fund Administrator to recommend coverage for cases that follow previously established precedent.

No comments have been received by NDEP regarding this issue.

RECOMMENDATION: Adoption of Resolution No. 96-003 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 96-003

Resolution to Adopt a Policy Delegating Authority  
to the Board's Petroleum Fund Administrator to Determine  
Petroleum Fund Coverage for Certain Cases  
Pursuant to NAC 590.780(1)

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Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NAC 590.780(1) states:

"An operator, vendor or contractor who seeks to be reimbursed by the fund for costs or liability for damages resulting from a discharge must submit to the division a verified claim for reimbursement in the form prescribed by the board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within 12 months after the date on which the operator, vendor or contractor knew or should have known of the discharge and the final claim must be submitted within 12 months after the completion of the corrective action necessitated by the discharge. The board will not accept a claim after either deadline unless the operator, vendor or contractor demonstrates good cause for the failure to comply with the deadline."

2. NAC 459.9973(1) requires the Nevada Division of Environmental Protection (NDEP) to consider site-specific information after initial response and abatement but prior to the commencement of corrective action activities.
3. NAC 459.9973(2) allows the owner or operator of a leaking Underground Storage Tank (UST) system to conduct an assessment of the release based on the risk that the release poses to human health and the environment using test method EI739-95 of the American Society for Testing and Materials (or any other method approved by NDEP). The assessment will determine the necessary corrective action to be required by NDEP at that time.
4. Several owners and operators have, in the past, requested coverage for their UST sites where the initial claim was submitted after 12 months from the date of discharge

discovery. Allowable causes for the failure to comply with the initial claim submittal deadline have included insufficient invoices to satisfy the deductible (for cases heard prior to July 1, 1995); and excusable neglect on the part of the owner, operator, or certified environmental manager to promptly submit the initial claim.

5. In each case where full coverage was allowed, the Board made the finding that full compliance with the regulatory directives of the overseeing agency was maintained. The Board also made the finding that, for those corrective actions that were complete, that an overall savings from delaying the initial claim submittal was not realized by paying a 10% co-payment rather than a \$10,000 per tank deductible.
6. NRS 590.890 requires (for all tanks other than the heating oil tanks described in NRS 590.880) a minimum total corrective action expense of \$5,000.01 to be eligible for fund reimbursements.
7. Pursuant to NAC 459.9973, there may be sites where the corrective action expense does not exceed \$5,000 within 12 months from the date of discharge discovery.
8. Currently, all owners and operators who appeal an initial denial of Petroleum Fund coverage pursuant to NAC 590.780(1) for their sites must have their individual cases heard by the Board.
9. For certain situations, it would be to the public's and to the Board's benefit to streamline the appeal process by granting to the Board's Executive Secretary the authority to allow Petroleum Fund Coverage.

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims grants to the Petroleum Fund Administrator the authority to determine good cause for the failure to comply with the deadlines specified in NAC 590.780(1) and allow Petroleum Fund coverage for the following situations:

1. Corrective action expenses did not exceed \$5,000 during the initial 12 months from the date of discharge discovery pursuant to NAC 459.9973 and NRS 590.890;
2. Corrective action expenses did not exceed the deductible that would have been established for the facility had the discharge been discovered on or

before July 1, 1994; or

3. The owner, operator, or CEM neglected to submit the initial claim pursuant to NAC 590.780(1).

In each case, coverage will only be recommended by the Petroleum Fund Administrator if both of the following conditions are satisfied:

1. Compliance has been continuously maintained by the owner or operator with the regulatory directives established by the appropriate oversight agency, and
2. There will be no cost savings to the owner or operator by paying a co-payment rather than by paying a deductible. Such an evaluation will only be made for cases where \$5,000 worth of invoices were accrued prior to July 1, 1995, and where the discharge was discovered prior to July 1, 1994.

All other appeals for coverage pursuant to NAC 590.780(1) will be referred to the Board for final decision. The Executive Secretary will include in a written executive summary at each regularly scheduled Board meeting a listing of all cases allowed coverage since the previous meeting pursuant to this resolution.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the Nevada State Board to Review Claims on February 29, 1996.

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John Haycock, Chairman  
State Board to Review Claims